

ORAL ARGUMENT REQUESTED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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336 LLC, d/b/a “The Erotica”, et al.,

Plaintiffs,

v.

THE CITY OF NEW YORK, et al.,

Defendants.

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**MOTION FOR
PRELIMINARY
INJUNCTION**

Docket No.
1:18-cv-3732-WHP

Please take notice that upon the declarations, affidavits, and exhibits filed in the Plaintiffs’ Joint Appendix, including, but not limited to, the Declaration of Dr. Elliott D. Sclar, dated November 13, 2018; the Declaration of Daniel J. Zazzali, dated November 13, 2018; the Declaration of Daniel Knecht, dated November 6, 2018; the Declaration of Yitzik Shachaf, dated November 2, 2018; the Declaration of Erica T. Dubno, dated November 13, 2018; the Declaration of Michael Berzak, dated November 12, 2018; the Declaration of Michael Berzak, dated November 13, 2018; the Declaration of Dr. Hugh Kelly, dated November 9, 2018; the Affidavit of Dr. Lance Freeman, dated June 30, 2017; the Declaration of Edward S. Rudofsky, dated November 14, 2018; the Club Plaintiffs’ Request to Take Judicial Notice, dated November 14, 2018; the Bookstore Plaintiffs’ Request to Take Judicial Notice, dated November 19, 2018; and all exhibits to these documents; and the Plaintiffs’ Memorandum of Law, dated November 21, 2018, and upon all of the papers filed and proceedings had in this case, counsel for the Plaintiffs 336 LLC, d/b/a “The Erotica”; Chelsea 7 Corp.; Gotham Video Sales & Distribution Inc.; Rainbow Station 7 Inc.; Video Lovers Inc.; Vishara Video, Inc.; Explore DVD LLC; Vishans Video,

Inc.; 725 Video Outlet Inc.; Jaysara Video, Inc.; DCD Exclusive Video Inc.; and 557 Entertainment Inc. (the “Plaintiffs”), will move this Court on February 28, 2019, at 10 a.m. in Courtroom 20B of the United States Courthouse, 500 Pearl Street, New York, New York 10007, or as soon thereafter as counsel may be heard, for an order pursuant to Federal Rule of Civil Procedure 65,

- (1) preliminarily enjoining the Defendants, their officers, agents, servants and employees, and all other persons acting under or on their behalf, from enforcing any provision of Text Amendment N 010508 ZRY to the City’s Zoning Resolution (the “2001 Resolution”) against the Plaintiffs and other existing bookstores, during the pendency of this litigation, on the grounds, inter alia, that enforcement of the 2001 Resolution by the Defendants violates the Plaintiffs’ constitutional rights, will cause the Plaintiffs irreparable harm, and tends to render the judgment sought in this action ineffectual. Or, in the alternative,
- (2) preliminarily enjoining the Defendants, their officers, agents, servants and employees, and all other persons acting under or on their behalf from requiring compliance by the Plaintiffs with the following provisions of the 2001 Resolution relating to the definition of an “adult establishment” and/or “adult bookstore” during the pendency of this litigation: (1) the prohibition against one or more individual enclosures where adult movies or live performances are available for viewing by customers (Z.R. § 12-10[2][d][bb]); (2) the prohibition against excluding or restricting minors

from the store as a whole or from any section of the store with non-adult material (Z.R. § 12-10[2][d][ff]); and (3) authorizing the Building Commissioner to adopt rules relating to “configuration and layout or method of operation”, which the Commissioner believes render the sale or rental of adult material a “substantial purpose” of the business conducted in such store (Z.R. § 12-10[2][d][ii]). Or, in the alternative,

- (3) granting Plaintiffs such other and further relief as may be just under the circumstances.

These Plaintiffs have not made any prior application to this Court or any other to enjoin enforcement of the 2001 Resolution. The Declaration of Erica T. Dubno, filed in support of this application, details the history of applications for injunctive relief made against the 2001 Resolution by other plaintiffs to other courts on other grounds. This application is made in good faith and not for purposes of delay.

November 21, 2018

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